

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
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UNITED STATES OF AMERICA,

-against-

MICHAEL EARL RODRIGUEZ,

Defendant.
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15 Cr. 756 (PAC)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

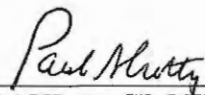
Upon consideration of the Government's *in limine* motion, dated September 2, 2016, and Defendant Michael Rodriguez's response, dated September 9, 2016, the Court holds that the Government may use Rodriguez's statements made in a proffer session pursuant to the terms of a written agreement signed by both Rodriguez and his counsel. The agreement, dated March 30, 2016, specifically provides that any statement made by Rodriguez could be offered at trial. Dkt. 51, Ex. A at 1. Rodriguez agreed not to assert any claim under "the United States Constitution, any statute, [or] Rule 410 of the Federal Rules of Evidence . . . that such statements . . . should be suppressed." *Id.* There is no doubt that such an agreement is enforceable and allows the admission of Rodriguez's statements. *United States v. Velez*, 354 F.3d 190, 195 (2d Cir. 2004).

Second, the Court holds that the Government may use Rodriguez's statements made via email and phone while he was detained. The statements are attenuated from the search of Rodriguez's gym bag, so the suppression of the bag and its contents does not bar the admission of the statements. *See United States v. Thompson*, 35 F.3d 100, 105 (2d Cir. 1994).

Third, the Court holds that Rodriguez's prior convictions are not admissible. The prior convictions are decades old; and their inclusion would be highly prejudicial, far outweighing any valid evidentiary purpose. *See* Fed. R. Evid. 404(b).

Dated: New York, New York
September 12, 2016

SO ORDERED



PAUL A. CROTTY
United States District Judge